CONSTITUTIONAL LAW—MECHANIC'S LIEN—ATTORNEY'S FEE.—That part of the mechanic's lien act of Colorado, which provides for the taxing of a reasonable sum as an attorney's fee to be fixed by the court and allowed plaintiff's attorney in all suits for the foreclosure of such liens in which plaintiff shall prevail, is unconstitutional. *Antlers Park Regent Mining Co.* v. *Cunningham* (Col.), 68 Pac. 226. Citing *Davidson* v. *Jennings*, 27 Col. 187, 48 L. R. A. 340.

In the latter case, the question is fully discussed and the provision held to be opposed to the letter and spirit of section 6 of the Bill of Rights of Colorado: "The courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and that right and justice should be administered without sale, denial or delay."

The court distinguishes cases in which the constitutionality of statutes requiring railroad companies to fence and providing penalties for disobedience to the statute, while the fee in the mechanic's lien cases is "a punishment for the failure to pay the claim of the lienor, and cannot be sustained upon the principle announced in those cases."

In support of its ruling, it cites *Durkee* v. *Janesville*, 28 Wis. 464, 9 Am. Rep. 500, adjudging the unconstitutionality of an act which exempted the city of Janesville from the payment of costs in any action that might be brought against it to set aside any assessment or tax-deed, or to prevent the collection of taxes. Also *R. R. Co.* v. *Morris*, 65 Ala. 193, where a statutory provision for a reasonable attorney fee to be paid by an unsuccessful appellant in a suit against a railroad company for damages to live stock was held to be in conflict not only with the Bill of Rights of Alabama, identical upon this point with that of Colorado, but also with the XIV Amendment to the Constitution of the United States. In the case of *Gulf &c. R. Co.* v. *Ellis*, 165 U. S. 150, a similar ruling was made, Mr. Justice Brewer saying:

"The act singles out a certain class of debtors and punishes them, when for like delinquencies it punishes no other. . . . In the suits to which they are parties, they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute."

MECHANICS LIEN—MINES.—A mechanics lien will not attach to the interest of the owner and lessor of a mine for work done or material furnished, where the same was done or furnished at the instance of or under contract with the lessee only. *Antlers Park Regent Mining Co.* v. *Cunningham*, *supra*. Affirming *Wilkins* v. *Abell*, 26 Col. 462, 58 Pac. 612.

LIFE INSURANCE—NON-PAYMENT OF PREMIUMS—FORFEITURE.—Before an approaching due-date of a premium upon a participating life-policy, insured became violently ill, incapacitating him from attending to his business, and died fifteen days after such due-date. A short while thereafter and within sixty days, his widow tendered the amount of the premium, which was refused by the company. Upon suit being brought, evidence was admitted, and excepted to, going to show the mental condition and physical disability of the insured to know and act upon his rights. *Held*, that it was admissible, not as a legal excuse for the non-payment of premiums, but as evidence of the fact that the

insured had not elected to suffer his policy to lapse. It was also held admissible in view of the custom of the insurance company to allow its members an indulgence of from thirty to sixty days. Evidence was also admitted at the trial that during the negotiations resulting in the policy, defendant's agent frequently represented to the insured that the company would grant from thirty to sixty days of grace, if insured could not meet his premiums promptly when due. This was excepted to as tending to vary the written terms of a contract. *Held*, admissible to show that the company had a custom or course of business with its customers, by which it habitually granted grace. *Aetna Life Insurance Co.* v. *Hartley* (Ky.), 67 S. W. 19.

Per O'Rear, J.:

"It seems to be well settled—or ought to be—that the agent of an insurance company who solicits insurance, takes the application, receives the premium, and delivers the policy may, by his conduct and acts, bind his company by way of waiver of a forfeiture. *Insurance Co.* v. *Spiers*, 87 Ky. 297, 8 S. W. 453; *Insurance Co.* v. *Wilkinson*, 13 Wall. 222, 20 L. Ed. 617. The courts are eager to seize upon any reasonable excuse to avoid an enforcement of such harsh provisions of insurance policies as provide for their forfeiture. Therefore when the agent of the insurer, the one ostensibly having charge of its business in the locality where the insured lives, by his conduct and course of dealing on behalf of his principal, induces one of the insurer's customers to believe that a strict compliance with the terms of his contract as to time or place of payment will not be required to be complied with, it will amount to a waiver of that provision of the policy. *Society* v. *McGregor*, 7 Ky. Law Rep. 750; *Mudd* v. *Insurance Co.* (Ky.), 56 S. W. 977."

MORTGAGES FOR PRESENT CONSIDERATION—VALIDITY.—An important ruling is that *In re Soudan Mfg. Co.* (C. C. A.), 113 Fed. 804. A mortgage for money borrowed without previous business relations between the parties to meet pressing current demands was executed August 1, 1900, and duly recorded prior to August 10, 1900, when an involuntary petition in bankruptcy was filed against the corporation. *Held*, reversing the order below, that under section 67d of the Bankrupt Act of 1898, providing that "liens given or accepted in good faith and not in contemplation of, or in fraud upon this act, and for a present consideration, shall not be affected by this act," the mortgage is valid, and to establish its invalidity, insolvency of the mortgagor must be proved, and also knowledge of such insolvency by the mortgagee, and that both borrower and lender intended to effect a preference or otherwise violate this statute.

Per Seaman, District J.:

"The validity of this security, however, does not depend upon the solvency of the borrower, or upon notice, actual or constructive, of its financial condition. The policy of the bankrupt law respecting liens for a present consideration differs radically from its treatment of preferences generally, or security for an existing indebtedness. While a preference is voidable (vide section 60b) when accepted with 'reasonable cause to believe it was intended thereby to give a preference,' and liens or security given to creditors within four months are declared void (section 67c, e, f), irrespective of notice, the provision which governs this case (section 67d) makes good faith on the part of the appellant the